

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



**FINDING OF EMERGENCY
GOVERNMENT CODE SECTION 11346.1
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
READOPTION OF EMERGENCY AMENDMENTS TO TITLE 8
CALIFORNIA CODE OF REGULATIONS
SECTION 3427 OF THE GENERAL INDUSTRY SAFETY ORDERS**

The Occupational Safety and Health Standards Board (Board) hereby finds that the emergency standard contained in Title 8 of the California Code of Regulations, Section 3427 of the General Industry Safety Orders (GISO), as codified in Register 2004, No. 18; dated April 30, 2004, is necessary for the immediate preservation of the public peace, health and safety or general welfare, pursuant to Government Code Section 11346.1.

The Board proposes to keep the emergency language in place by readopting emergency amendments to GISO Section 3427, "Tree Work, Maintenance or Removal," for the reasons outlined below, as authorized by Labor Code Section 142.3.

On March 7, 2003, the then Governor Gray Davis proclaimed a State of Emergency for Riverside, San Bernardino and San Diego Counties due to the epidemic bark beetle infestation. Wild land fires in the fall of 2003 significantly added to the number of dead or damaged trees in these counties. For public safety purposes, and before the full restoration of damaged telephone lines, cable and low and high voltage electrical lines can be achieved, it is essential that these trees are expeditiously removed. It is also necessary to remove these damaged trees as soon as possible in order to minimize the extent and amount of dry and dead wood that could serve as fuel for the current fire season, as last year's Southern California fires covered over half a million acres, destroyed approximately 2,300 structures, caused billions of dollars in damage, and resulted in 16 fatalities.

The damaged condition of these trees, however, presents an immediate hazard not only to the public in nearby areas, but to the workers responsible for clearing and removing the trees. The location and extent of damage to individual trees make them unsafe to access for trimming or removal by conventional methods such as climbing or use of aerial devices. Consequently, in order to expedite the safe removal of these damaged trees, the Board adopted an emergency standard permitting the use of cranes to access the trees under certain circumstances and with specific safeguards in place when access by climbing or use of an aerial device is unsafe to conduct tree removal operations. The emergency standard was approved by the Office of Administrative Law (OAL), OAL File No. 04-0420-04E, filed with the Secretary of State, and became effective on April 29, 2004.

The Board has since publicly noticed the proposed permanent standard, California Regulatory Notice Register No. 18-Z, dated April 30, 2004, and permitted public comment on the proposed permanent standard at its June 17, 2004, public meeting. As a result of public comment and

Board Member concerns, the Board requested that a representative advisory committee be convened to further review the standard. The Board convened an advisory committee on August 12, 2004, in San Bernardino, California. Consequently, a 15-Day Notice of Proposed Modifications to the permanent standard is forthcoming. Meanwhile, the Board has elected to extend the existing emergency standard and adopt the permanent standard at a future Business Meeting.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Authority: Labor Code Section 142.3. Reference: Labor Code Section 142.3

Federal OSHA's general industry standards contained in 29 Code of Federal Regulations (CFR), Part 1910, and construction-related standards contained in the 29 CFR, Part 1926, do not address the lifting of personnel attached by a suspended rope to the hook of a crane for the purpose of access to trees. However, federal OSHA industry-specific standards for marine terminals contained in 29 CFR 1917.45(j)(1)(ii) provide in summary, that an employee could be hoisted from the hoisting apparatus of a crane or derrick in a boatswain's chair or other device rigged to prevent it from accidental disengagement from the hook or supporting member.

The practice of hoisting a tree worker is permitted in the national consensus standard, ANSI Z133.1-2000, entitled "Pruning, Repairing, Maintaining and Removing Trees, and Cutting Brush – Safety Requirements." However, this work practice is not addressed in California's standards in GISO, Article 12, "Tree Work, Maintenance and Removal." Therefore, in order to permit this practice when it is unsafe to access trees using conventional methods (climbing or aerial device), the following proposed amendments to Section 3427 are necessary.

Proposed amendments for subsections 3427(a)(1) & (2).

Existing Section 3427 "Climbing and Access," provides standards for safe working procedures for climbing and accessing trees, pruning and trimming, and tree removal activities. Subsection (a)(1) requires that prior to climbing the tree, the tree shall be visually inspected by a "qualified person" who shall determine and ensure a safe method of entry into the tree. An amendment is proposed that would require that "a qualified tree worker" does the inspection and determination of method for safe entry. The proposed amendment would have the effect of ensuring that a person who has the training, experience and demonstrated familiarity with the techniques and hazards specific to tree work performs the inspection.

The language from existing subsection 3427(a)(2) requires the location of all electrical conductors and equipment within the work area be identified in relation to the work being performed. It is proposed that this subsection be deleted and editorially move this requirement to subsection (a)(1) for clarity purposes. The amendment would have the effect of ensuring that the location of all electrical conductors and equipment are identified during the inspection process when determining what the safest method and location of entry into the tree will be.

Proposed new subsection 3427(a)(1)(A).

This proposed new subsection would require that when a tree cannot be safely accessed by climbing or the use of aerial devices, a qualified tree worker may be hoisted into position by using an approved tree worker's saddle suspended from the closed hook of a crane. In addition to the line/rope suspending the worker in a tree saddle, the standard would also require the tree worker's saddle to be secured to an independent safety line attached above the crane hook. The effect of this new subsection would limit the use of a crane to hoist a qualified tree worker only when access by climbing or aerial device is not safe. Further effects of this new subsection would ensure that while the qualified tree worker is suspended from the crane hook, appropriate equipment such as another line (independent of the line used to suspend the worker and tree saddle to the crane hook) is used so that the worker has fall protection while access and positioning from the crane into the tree is achieved.

Proposed new subsection 3247(a)(1)(A)1.

This proposed new subsection would require all climbing equipment, lines, and rigging to have a minimum breaking strength of at least 5000 pounds. This amendment is consistent with the provisions for fall protection systems contained in Section 1670 of the Construction Safety Orders. The effect of this new subsection would ensure that all fall protection equipment meets established design and strength requirements.

Proposed new subsection 3427(a)(1)(A)2.

The provisions of this new subsection would require that the crane boom and load line be moved in a slow, controlled, cautious manner with no sudden movements when the qualified tree worker is attached to the crane. The effect of this new subsection would mitigate potential hazards associated with swinging the worker that may result from sudden or unexpected movements of the crane.

Proposed new subsection 3427(a)(1)(A)3.

GISO Section 5004, "Crane or Derrick Suspended Personnel Platforms," applies to the design, construction and maintenance of personnel platforms, and the hoisting of personnel platforms on load lines of cranes and derricks. A personnel platform must be equipped with a guardrail system and a number of other requirements not applicable or practicable for the design of an approved tree worker saddle. The provisions of Section 5004 then would not be applicable when hoisting a worker suspended in an approved tree worker saddle. However, Section 5004 contains provisions that address similar safe crane operations when hoisting personnel. Therefore, the proposed new subsection references the provisions of Sections 5004(d)(2), (4), (5), (6), and 5004(e) and would have the effect of specifying safe crane operations for hoisting a qualified tree worker suspended in a tree worker saddle.

Proposed new subsection 3427(a)(1)(A)4.

This proposed new subsection would specify that the qualified tree worker being hoisted shall be in continuous communication with the crane operator, or signals shall be relayed by a qualified signal person as provided in Section 5001. Maintaining effective communication with the crane

operator is essential for immediate action necessary by the crane operator for the safety of the tree worker being hoisted by a crane. This new subsection would have the effect of ensuring prompt communication with the crane operator at all times.

Proposed new subsection 3427(a)(1)(A)5.

New subsection 3427(a)(1)(A)5 would require that the crane operator remain at the controls when the qualified tree worker is attached to the crane. This proposed new subsection would have the effect of ensuring that the crane operator could take immediate action to address emergencies and take actions necessary for the safe positioning of the tree worker.

Proposed new subsection 3427(a)(1)(A)6.

The proposed new subsection would require the qualified tree worker to be detached from the crane while the load is hoisted. Crane accidents are most likely to occur when the crane is lifting a load. Therefore, the proposed new subsection would have the effect of prohibiting the tree worker from being attached to the crane when the load is being hoisted.

Proposed new subsection 3427(a)(1)(A)7.

This proposed new subsection would require the employer to ensure that the crane operator and qualified tree worker determine the weight of the load being lifted to prevent the crane from being overloaded. The proposed new subsection would have the effect of mitigating the possibility of overloading the crane as the weight of the tree portion or limb being removed and hoisted would need to be calculated and a determination made that the load is within the crane's lift capacity (load charts) provided by the crane manufacturer.

Proposed new subsection 3427(a)(1)(A)8.

Under certain conditions, GISO Section 5004 permits the hoisting of personnel platforms on the load line of cranes. Section 5004(k)(5) requires that the hoisting of employees be discontinued in dangerous weather conditions or other impending danger. Proposed new subsection 3427(a)(1)(A)8 adopts similar language and would have the effect of prohibiting work when inclement weather or other dangerous conditions present a hazard to employees.

Notes No. 1 and 2 for Section 3427.

An informational note is proposed for this section advising that other crane requirements are contained in GISO Group 13, Cranes and Other Hoisting Equipment. A second informational note is proposed advising that Article 38 of the High Voltage Electrical Safety Orders addresses line clearance tree trimming operations. The effect of these notes is to remind the reader of other standards related to crane operations, and tree trimming operations in the vicinity of exposed energized conductors and equipment.

DOCUMENTS RELIED UPON

- ANSI Z133.1 - 2000 for Arboricultural Operations - “Pruning, Repairing, Maintaining and Removing Trees, and Cutting Brush – Safety Requirements.”
- Memorandum dated February 18, 2004, from Len Welsh, Acting Chief, Division of Occupational Safety and Health, to Steven Rank, Chairman, Occupational Safety and Health Standards Board, regarding Emergency Safety Order to Address Access to Trees.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite, 350, Sacramento, California.

STRIKEOUT/UNDERLINE DRAFT PROPOSAL

See Attachment No. 1.

SIDE-BY-SIDE CODE COMPARISON WITH FEDERAL STANDARD

See Attachment No. 2.

Federal OSHA general industry standards do not address requirements for climbing/access via cranes specific to tree maintenance or removal. However, a side-by-side comparison is provided for informational purposes. The comparison identifies federal OSHA standards that address entry into trees associated with electrical hazards (29 CFR 1910.268) and federal marine terminal standards that address the lifting of employees by the hoisting apparatus of a crane or derrick.

COST ESTIMATES OF PROPOSED ACTION

The proposed standard would have no cost or fiscal impact to affected employers because it does not mandate, but rather permits an alternative method (use of a crane) to access trees when conventional methods are unsafe.

Costs or Savings to State Agencies

No cost or savings to state agencies would result as a consequence of the proposed action.

Costs or Savings in Federal Funding to the State

The proposal would not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local Agencies are required to be reimbursed. See explanation under the heading “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the State is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed requirements.

Attachments